

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHARITY W. PEREGOY,)	
)	
Appellant,)	
)	
V.)	C.A. No. N10A-04-015 JRS
)	
DELAWARE HOSPICE,)	
and The UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: June 27, 2011
Date Decided: August 12, 2011

Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

This 12th day of August, 2011, upon consideration of the *pro se* appeal of Charity W. Peregoy from the decision of the Unemployment Insurance Appeal Board (the “Board”), in which the Board dismissed her claim for unemployment benefits against her former employer, Delaware Hospice, Inc. (“Delaware Hospice”), it appears to the Court that:

1. Ms. Peregoy was an employee of Delaware Hospice in good standing from May, 2007, until her resignation on February 26, 2009.¹ She resigned from Delaware Hospice to relocate to Georgia due to her husband’s military transfer.²

2. Ms. Peregoy filed for unemployment benefits with the Delaware Department of Labor (“DOL”) on October 18, 2009.³ The Claims Deputy determined that, because Ms. Peregoy “left her position for personal reasons,” she was disqualified from receiving benefits pursuant to 19 *Del. C.* §3314(1).⁴ The determination of disqualification for benefits was dated and mailed to Ms. Peregoy on November 20, 2009.⁵

3. Ms. Peregoy filed a timely appeal of the Claims Deputy’s decision with the Appeals Referee.⁶ On December 29, 2009, the Appeals Referee conducted a hearing on the issue of whether Ms. Peregoy voluntarily left her employment with

¹Record (“R.” at __) at 17.

²*Id.*

³*Id.* at 10.

⁴*Id.*; *See* 19 *Del. C.* §3314(1) (“An individual shall be disqualified for benefits: For the week in which he left work voluntarily without good cause attributable to such work and for each week thereafter until he has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.”).

⁵R. at 10.

⁶*Id.* at 11.

Delaware Hospice without good cause.⁷ The Appeals Referee found, even though Ms. Peregoy may have had “a real and compelling reason to resign,” that her reasons for leaving were nonetheless personal.⁸ The Appeals Referee, therefore, determined that Ms. Peregoy “voluntarily left her work without good cause attributable to such work” and affirmed the Claims Deputy’s decision to deny Ms. Peregoy unemployment benefits pursuant to 19 *Del. C.* §3314(1).⁹ The decision was mailed to Ms. Peregoy on December 30, 2009.¹⁰

4. Ms. Peregoy filed a timely appeal of the Appeals Referee’s decision with the Board.¹¹ A hearing was scheduled for March 17, 2010.¹² Notice of the hearing was mailed to Ms. Peregoy on March 3, 2010, and stated that her appeal could be dismissed as a result of her failing to appear at the hearing in a timely manner.¹³

5. Ms. Peregoy failed to appear before the Board on the scheduled hearing

⁷*Id.* at 15.

⁸*Id.* at 18.

⁹*Id.*

¹⁰*Id.* at 16.

¹¹*Id.* at 22.

¹²*Id.*

¹³*Id.*

date and the Board subsequently dismissed her appeal.¹⁴ The decision was mailed to Ms. Peregoy on March 17, 2010 and, on April 5, 2010, she filed an appeal of the Board's dismissal with this Court.¹⁵

6. The Court's review is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.¹⁶ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁷ The record must be reviewed in the light most favorable to the prevailing party.¹⁸ Alleged errors of law are reviewed *de novo*, but in the absence of legal error, the Board's decisions are reviewed for an abuse of discretion.¹⁹ The Court will find an abuse of discretion only when an administrative board's decision "exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce

¹⁴*Id.* at 23.

¹⁵*Id.* at 23, 29.

¹⁶*See, e.g., Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *3 (Del. Super. Apr. 15, 2003).

¹⁷*James Julian, Inc. of Del. v. Testerman*, 740 A.2d 514, 519 (Del. Super. 1999) (citations omitted).

¹⁸*See, e.g., Id.; E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. 2004).

¹⁹*See Merritt v. United Parcel Svc.*, 956 A.2d 1196, 1200 (Del. 2008) (citations omitted).

injustice.”²⁰

7. Pursuant to 19 *Del. C.* §3322(a), the Court is only permitted to review the Board’s finding after the claimant has exhausted all administrative remedies.²¹ An appellant has not exhausted available administrative remedies if her appeal is dismissed as a result of the failure to appear at a Board hearing.²² Ms. Peregoy does not dispute that she failed to appear before the Board and, as such, the Court is limited to the issue of whether the Board abused its discretion in dismissing the appeal for Ms. Peregoy’s failure to appear.²³

8. In support of her appeal to this Court, Ms. Peregoy contends that she did not receive notice of the hearing before the Board until “a couple of days prior” to the hearing date and, consequently, the Board did not provide her with timely notice of the hearing.²⁴ Ms. Peregoy additionally argues that she could not attend the hearing

²⁰*Bolden v. Kraft Foods*, 889 A.2d 283, 2005 WL 3526324, at *2 (Del. Super. Dec. 21, 2005) (TABLE).

²¹See 19 *Del. C.* §3322(a) (“Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.”).

²²See, e.g., *Harris v. Mountaire Farms of Delaware*, 2003 WL 22853425, at *2 (Del Super. July 16, 2003); *Griffin v. Daimler Chrysler*, 2001 WL 33309877, at *2 (Del. Super. Apr. 27, 2001); *Mintz v. Wilmington Trust Co.*, 1995 WL 862116, at *3 (Del. Super. Nov. 15, 1995).

²³*Beckett v. Mountaire Farms of Delmarva*, 2011 WL 1260096, at *2 (Del. Super. Mar. 19, 2011)

²⁴R. at 29.

because: (1) she lives out of state and her husband was away on temporary duty military orders; (2) making such a long trip alone with her three children is not possible; and (3) she lacked the necessary funds to make the trip.²⁵

9. When mail is properly addressed and has the proper postage, it is presumed that the mailed package has been timely received by the recipient.²⁶ Ms. Peregoy's denial of timely receipt, alone, is insufficient to overcome the presumption of delivery.²⁷ The record reflects that the notice of the hearing was mailed to Ms. Peregoy two weeks prior to the hearing date and that it was properly addressed to her Georgia address.²⁸ The Court must presume, in the absence of credible evidence to the contrary, that Ms. Peregoy received proper and timely notice of the hearing.

10. Under 19 Del. Admin. C. §1201-4.2, the Board is given discretion to dismiss an appellant's appeal if she fails to appear for noticed hearings within ten minutes of the time indicated on the Hearing Notice.²⁹ This Court has regularly

²⁵*Id.* at 22.

²⁶*Rampulla v. Jimmy's Grille & Catering*, 2009 WL 2852433, at *2 (Del. Super. June 5, 2009); *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *5 (Del. Super. Jan. 2, 2007).

²⁷*Rampulla*, 2009 WL 2852433, at *2; *Filanowski*, 2007 WL 64758, at *5.

²⁸*R.* at 22.

²⁹ 19 Del. Admin. C. §1201-4.2 states: "Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal."

recognized the importance of allowing administrative boards to enforce their rules, such as 19 Del. Admin. C. §1201-4.2, in order that they may efficiently manage and dispose of cases before them.³⁰ Ms. Peregoy does not dispute her failure to appear for her noticed hearing before the Board.

11. The Board may dismiss a case “where the claimant has failed to provide a valid excuse for failing to appear at his or her hearing.”³¹ Ms. Peregoy could have notified the Board of the troubles she faced by requesting a postponement or rehearing.³² She did neither. Instead, she simply chose not to attend her hearing. Under these circumstances, Ms. Peregoy has failed to provide the Court with a valid reason for overruling the Board’s determination.

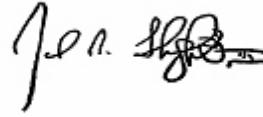
12. Based on the foregoing, the Court is satisfied that the Board acted within its discretion. Accordingly, the decision of the Board dismissing Ms. Peregoy’s appeal of the Appeals Referee’s decision must be **AFFIRMED**.

³⁰*Beckett*, 2011 WL 1260096, at *2; *Archambault v. McDonald’s Restaurant*, 1999 WL 1611337, at *2 (Del. Super. Mar. 22, 1999); *Hash v. Guardian Fence*, 1994 WL 711192 at *2 (Del. Super. Dec. 7, 1994).

³¹*Connors v. Mountaire Farms of Delmarva, Inc.*, 1996 WL 453327, at * 3 (Del. Super. May 22, 1996)

³²19 Del. Admin. C. §1201-4.4.2 (“Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted for reasons of unanticipated emergencies.”); 19 Del. Admin. C. § 1201-7.0 (“At any time subsequent to a Board decision but prior to the Board’s decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. . . .”).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III, Judge

Original to Prothonotary